

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)**

<b>UNITED STATES SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
	)	<b>Civil Action No. 05-CV-10983 (NMG)</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>STEVEN E. NOTHERN,</b>	)	
	)	
<b>Defendant.</b>	)	

**JOINT STATUS REPORT  
REGARDING THE PRODUCTION OF DOCUMENTS FROM OTHER GOVERNMENT  
DEPARTMENTS AND AGENCIES**

The parties submit this joint status report pursuant to the Court’s Order of August 10, 2006.

**BACKGROUND**

On June 14, 2006, the Court (Sorokin, M. J.) held a hearing on defendant Steven E. Nothern’s motion to compel production of documents from various federal departments and agencies. The Court asked the parties if they would be willing to attempt to resolve Nothern’s request for documents from other government agencies without Court intervention. In response to the Court’s inquiry, the Securities and Exchange Commission (“SEC”) agreed to present Nothern’s requests for documents to Treasury Department (“Treasury”), the Department of Justice (“DOJ”), and the Commodities Futures Trading Commission (“CFTC”). On June 22, 2006, Nothern submitted to the SEC his document requests to the SEC. On June 30, 2006, the SEC forwarded Nothern’s document requests to Treasury, DOJ, and the CFTC with cover letters asking the agencies to voluntarily produce the documents to the SEC and Nothern. On July 31,

2006, pursuant to Court Order, the SEC filed a status report advising the Court of responses that it had received from its June 30, 2006 letters to Treasury, DOJ and the CFTC. On August 9, 2006, the parties jointly moved for an extension of the discovery schedule. On August 10, 2006, the Court granted the parties' request and entered an Order modifying the discovery schedule and ordering the parties to provide the Court with a joint status report advising the Court of the status of the document productions described in the SEC's July 31, 2006 status report. The following is the status of the responses received from other government agencies.

### **PRODUCTION FROM TREASURY**

On July 28, 2006, Treasury counsel, Thomas McGivern, notified counsel for the SEC that Treasury expected to begin producing documents responsive to Nothern's requests during the week of July 31, 2006. Treasury counsel stated that Treasury would not be able to produce all of the requested documents at the same time, but would produce documents on a rolling basis. On or about, June 14, 2006, Treasury provided the parties with a small production of documents in response to the FOIA request that it had received that was largely duplicative of the documents sought in the SEC's June 30, 2006 letter. On August 3, 2006, Treasury produced approximately 72 pages of additional documents. On September 6, 2006, Treasury produced an additional 28 pages of documents. By letter dated September 6, 2006, Treasury represented to counsel for the SEC that they will be making another production of documents during the week of September 11, 2006.

Treasury's counsel has declined to estimate when Treasury's production will be complete, but has represented to the parties that locating and producing responsive document, especially emails, has been difficult and time consuming.

**PRODUCTION FROM DOJ**

On July 27, 2006, Assistant United States Attorney, Brian Coad, responded to the SEC's June 30, 2006 request for production of documents by stating that it received "a large portion of its documentation relating to this matter, by virtue of an access request, from the SEC." Mr. Coad further stated that to the extent DOJ obtained other materials relating to Treasury's announcement on October 31, 2001, "those materials were obtained pursuant to federal grand jury subpoenas and in the course of a criminal investigation," and stated that the materials are protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure. The parties do not anticipate any further response from DOJ concerning the SEC's June 30, 2006 request.

**PRODUCTION FROM THE CFTC**

On or about July 19, 2006, counsel for the CFTC contacted counsel for the SEC requesting clarification of certain requests contained in the SEC's letter dated June 30, 2006. The SEC's counsel promptly contacted Nothern's counsel seeking clarification of Nothern's requests. On July 26 and July 28, 2006, the SEC's counsel provided the CFTC with Nothern's clarified requests.

On August 10, 2006, the SEC and Nothern participated in a conference call with counsel and representatives from the CFTC in which counsel for the CFTC sought and received further clarification directly from Nothern's counsel regarding the documents sought by Nothern's requests. On August 24, 2006, the CFTC produced to Nothern some of the requested documents, but stated on September 5, 2006, that it is still searching for additional documents.

**CONCLUSION**

At this time, the parties are unable to notify the Court as to whether the voluntary document productions by agencies other than the SEC will resolve Nothern's Motion to Compel, because those agencies are still in the process of responding to the document requests.

Dated: September 8, 2006

**FOR THE PLAINTIFF:**

/s/ Erica Y. Williams  
Erica Y. Williams  
John J. Rossetti, Jr.  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-4010  
Phone: (202) 551-4450  
Fax: (202) 772-9245  
williamse@sec.gov

**FOR THE DEFENDANT:**

/s/ John A. Shope  
Nicholas C. Theodorou (BBO # 495730)  
John A. Shope (BBO # 562056)  
Robert E. Toone (BBO # 663249)  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Phone: (617) 832-1000  
Fax: (617) 832-7000  
jshope@foleyhoag.com